

## **REMARKS / ARGUMENTS**

### **In General**

This correspondence addresses the Examiner's comments regarding the reply of 10/27/03, which was deemed not fully responsive to the prior Office Action. (Paper 7, page 2). During a 1/26/04 telephone conference between the Examiner and Applicant's Attorneys, it was identified that an administrative error had occurred and that Applicant's reply of 10/27/03 contained claim numbering that did not match the claim numbering of the application as originally filed. This administrative error was without any intent to deceive the Examiner. In this reply, the substance of the 10/27/03 reply is repeated with the claim numbering corrected and reference being made to the Office Action of 6/23/2003.

During the 1/26/04 telephone conference between the Examiner and Applicant's Attorneys, it was also identified that the finality of the office action of 1/12/2004 was incorrectly stated. Accordingly, Applicant herein requests withdrawal of the finality of the office action of 1/12/2004.

### **Status of Claims**

Claims 1-36 are pending in the application. All pending claims stand rejected. Claims 13-36 are objected to. Applicant has canceled Claims 1, 4, 9, 14, 22, 33, and has amended Claims 2, 5, 10, 13, 15, 23-32, and 34-36, leaving Claims 2, 3, 5-8, 10-13, 15-21, 23-32, 34-36, for consideration upon entry of the present Amendment.

Applicant respectfully submits that the drawing objections, the claim objections, and the claim rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a), have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

### **Objections to the Drawings**

Figure 2 is objected to because the boxes in the figure are not labeled. Figure 3 is objected to because certain numbers in the figure are not clear. Applicant herewith provides proposed drawing corrections.

Regarding Figure 2, Applicant has included labels in the boxes, which finds support in the specification at page 4, items 44 and 46. No new matter has been added.

Regarding Figure 3, Applicant has amended the numbers in the profile by day, KWH Usage by Day, and Demand Graph for clarity. The abscissa numbers have been renumbered 1-n for clearer representation of the date and/or time. The ordinate numbers have been presented in a clearer format. No new matter has been added.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

### **Objections to the Claims**

Claim 13 is objected to because of insufficient antecedent basis. Claims 14-21 are objected to because they depend on objected Claim 13.

Applicant has amended Claim 13 as suggested by the Examiner, and has canceled Claim 14. Claims 15-21 depend either directly or indirectly from Claim 13.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

### **Rejections Under 35 U.S.C. §102(b)**

#### **Regarding Claims 1-4, Examiner's Paragraph 3**

Claims 1-4 stand rejected under 35 U.S.C. §102(b) as being anticipated by Turino et al. (U.S. Patent No. 5,994,892, hereinafter Turino). Applicant traverses this rejection for the following reasons.

Turino discloses a utility meter 10 having a transformer 160 and current sensors 110, 130. The utility meter 10 is operatively coupled to a utility box 20 and operatively coupled to a telephone service wire 51. (Col. 13, line 42, through col. 14, line 65). An

enclosure 80 protects the electronic components of meter 10. (Col. 15, lines 25-28). Data from meter 10 is sent to a central computer via a modem for automatic billing. (Col. 6, line 65, through col. 7, line 7). Turino is notably absent a software module including; a database object, the database including electrical usage information; an analysis object coupled to the database for analyzing the electrical usage information; a comparator object coupled to the database object, the comparator object periodically comparing the electrical usage information and a predefined electrical rate profile; and, a reporting object coupled to the database object and the analysis object.

Applicant respectfully submits that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, *in a single prior art reference.*” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the \*\*\* claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant has canceled Claims 1, 4 and 9, and has rewritten Claim 5 in independent form that includes elements of Claims 1, 4 and 9.

In comparing Turino with the instant invention, Applicant respectfully submits that Claim 5 includes the element of a software module including; a database object, the database including electrical usage information; an analysis object coupled to the database for analyzing the electrical usage information; a comparator object coupled to the database object, the comparator object periodically comparing the electrical usage information and a predefined electrical rate profile; and, a reporting object coupled to the database object and the analysis object. Applicant finds no disclosure of this element in Turino.

Dependent claims inherit all of the limitations of the parent claim.

In view of the amendment and foregoing remarks, Applicant submits that Turino does not disclose each and every element of the claimed invention and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner’s

rejection under 35 U.S.C. §102(b) has been traversed, and requests that the Examiner reconsider and withdraw of this rejection.

Regarding Claims 13-36, Examiner's Paragraph 4

Claims 13-36 stand rejected under 35 U.S.C. §102(b) as being anticipated by Ehlers et al. (U.S. Patent No. 5,572,438, hereinafter Ehlers). Applicant traverses this rejection for the following reasons.

Ehlers discloses an energy management system 10 having a communications interface unit 16, a first microcomputer 18, a local area network communications medium 20, a second microcomputer 22, a plurality of load sensing and/or load control modules 24, one or more condition detectors 26, an electrically readable watt-hour meter 14, and input/output devices 27. (Col. 8, lines 12-41). By monitoring power consumption, the customer can be and is provided a great deal of information which allows the customer to make decisions about load utilization. (Col. 5, lines 44-55). Ehlers is notably absent an analysis object coupled to the database object for analyzing the electrical usage information, and a comparator object coupled to the database object, the comparator object periodically comparing the electrical usage information of each of the plurality of monitoring devices and a predefined electrical rate profile.

Applicant respectfully submits that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, *in a single prior art reference.*” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the \*\*\* claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding Claims 13, 22 and 29-32 specifically

Applicant has canceled Claims 14, 22, and 33, has amended independent Claims 13 and 31, and has rewritten Claim 29 in independent form including elements of base

Claim 22. Other claims have been amended for proper dependencies. Dependent claims inherit all of the limitations of the respective parent claim.

Independent Claim 13 now recites, inter alia, "...an analysis object coupled to said database object for analyzing said electrical usage information; a comparator object coupled to said database object, said comparator object periodically comparing said electrical usage information of each of said plurality of monitoring devices and a predefined electrical rate profile; and, a reporting object coupled to said database object and said analysis object..."

Independent Claim 29 now recites, inter alia, "...a software module, said software module including a database object, an analysis object, a comparator object, and a reporting object..."

Independent Claim 31 now recites, inter alia, "...analyzing the electrical usage information; comparing the electrical usage information against a predetermined electrical rate profile; and reporting electrical usage parameters..."

In comparing Ehlers with the instant invention, Applicant respectfully submits that independent Claims 13, 29, and 31, include the element of an analyzer, a comparator, and a reporter. Applicant finds no disclosure of this combination of elements in Ehlers.

The Examiner cites Ehlers at col. 5, lines 44-55, in support of an analyzer of the claimed invention, and col. 27, lines 5-56, in support of a comparator of the claimed invention.

In respectful disagreement with the Examiner, Applicant finds Ehlers at col. 5, lines 44-55, to disclose a monitoring system whereby "the customer can be and is provided with a great deal of information which allows *the customer* to make decisions about load utilization." (Emphasis added) (Col. 5, lines 46-49). Here, Applicant does not find a retrofitable power monitoring system having the element of an analyzer, a comparator, and a reporter, which enables system analysis, comparison, and reporting, as claimed in the instant invention. Rather, Applicant finds a flow of information to the customer, which allows *the customer* to make decisions. Accordingly, Ehlers is a

substantially different invention from the claimed invention and is missing an element of the claimed invention.

In further disagreement with the Examiner, Applicant finds Ehlers at col. 27, lines 5-56, to disclose a monitoring system whereby “*the user* can load any of the collected data into a spreadsheet program of the user’s choice, which then will allow *the user* to ask, and obtain answers to, ‘what if’ type questions.” (Emphasis added) (Col. 27, lines 33-36). Here, Applicant does not find a retrofitable power monitoring system having the element of an analyzer, a comparator, and a reporter, which enables system analysis, comparison, and reporting, as claimed in the instant invention. Rather, Applicant finds a flow of information to the user, which allows *the user* to make decisions with the help of an external spreadsheet. Accordingly, Ehlers is a substantially different invention from the claimed invention and is missing an element of the claimed invention.

Regarding Claims 14 and 33 specifically

Applicant has canceled Claims 14 and 33, thereby obviating this rejection.

Regarding Claims 15-17 specifically

The Examiner alleges that Ehlers teaches the claimed invention of Claims 15-17, but does not reference a single element of Ehlers in support thereof. Accordingly Applicant respectfully requests reconsideration and withdrawal of this rejection, or a more complete reason for the rejection. However, in view of Claims 15-17 being amended to depend from amended Claim 13, Applicant respectfully submits that Claims 15-17 are allowable and requests notice thereof.

Regarding Claims 18-20 specifically

The Examiner alleges that Ehlers, at col. 27, lines 5-38, teaches the claimed invention of Claims 18-20, but as Applicant has already discussed, Ehlers discloses a system where *the customer* makes decisions, which is a substantially different invention from the claimed invention. Accordingly, and for at least the reasons stated previously in

regard to Claim 13, Applicant respectfully submits that Claims 18-20 are allowable and requests notice thereof.

Regarding Claim 21 specifically

The Examiner alleges that Ehlers, at col. 11, lines 45-52, teaches the claimed invention of Claim 21, but as Applicant has already discussed, Ehlers discloses a system where *the customer* makes decisions, which is a substantially different invention from the claimed invention. Accordingly, and for at least the reasons stated previously in regard to Claim 13, Applicant respectfully submits that Claim 21 is allowable and requests notice thereof.

Regarding Claims 23, 25, 26 and 28 specifically

The Examiner alleges that Ehlers, at col. 2, lines 54-68, teaches the claimed invention of Claims 23, 25, 26 and 28. However, Applicant has amended Claims 23, 25, 26 and 28 to depend either directly or indirectly from amended Claim 29, and for at least the reasons discussed previously in connection with Claim 29, Applicant respectfully submits that Claims 23, 25, 26 and 28, are allowable and requests notice thereof.

Regarding Claim 24 specifically

The Examiner alleges that Ehlers, at col. 4, lines 20-34, teaches the claimed invention of Claim 24. However, Applicant has amended Claim 24 to depend indirectly from amended Claim 29, and for at least the reasons discussed previously in connection with Claim 29, Applicant respectfully submits that Claim 24 is allowable and requests notice thereof.

Regarding Claim 27 specifically

The Examiner alleges that Ehlers, at col. 4, lines 50-67, teaches the claimed invention of Claim 27. However, Applicant has amended Claim 27 to depend directly from amended Claim 29, and for at least the reasons discussed previously in connection

with Claim 29, Applicant respectfully submits that Claim 27 is allowable and requests notice thereof.

Regarding Claims 34-36 specifically

The Examiner alleges that Ehlers, at col. 27, lines ???, teaches the claimed invention of Claims 34-36. However, Applicant has amended Claims 34-36 to depend either directly or indirectly from amended Claim 31, and for at least the reasons discussed previously in connection with Claim 31, Applicant respectfully submits that Claims 34-36 are allowable and requests notice thereof.

In view of the amendment and foregoing remarks, Applicant submits that Ehlers does not disclose each and every element of the claimed invention and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejection under 35 U.S.C. §102(b) has been traversed, and requests that the Examiner reconsider and withdraw of this rejection.

Rejections Under 35 U.S.C. §103(a)

Claims 5-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Turino in view of Ehlers.

The Examiner acknowledges that Turino fails to teach an analysis object coupled to a database for analyzing the electrical usage information, and looks to Ehlers at col. 5, lines 44-55, to cure this deficiency. (Paper 4, page 6).

The Examiner acknowledges that Turino fails to teach a reporting object coupled to the database object and the analysis object, and looks to Ehlers at the Abstract, col. 12, line 3 to col. 13, line 11, and figures 29-37, to cure this deficiency. (Paper 4, page 6).

The Examiner acknowledges that Turino fails to teach a reporting object displaying the plurality of reports on the monitor, and looks to Ehlers at col. 11, lines 45-52, to cure this deficiency. (Paper 4, page 7).

The Examiner acknowledges that Turino fails to teach a comparator object coupled to the database object, the comparator object periodically comparing the electrical usage information and a predefined electrical rate profile, and looks to Ehlers at col. 27, lines 5-56, to cure this deficiency. (Paper 4, page 7).

Applicant traverses the Examiner's rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

As discussed previously in reference to the rejections under 35 U.S.C. §102, Applicant has canceled and amended several claims to more clearly describe embodiments of the present invention. Claim 5 has been rewritten in independent form and includes the elements of a software module having a database object, an analysis object, and a comparator object. Dependent claims inherit all of the limitations of the parent claim.

In view of the amendments to the claims, in combination with the discussions earlier regarding the rejections under 35 U.S.C. §102(b), Applicant respectfully submits that Turino in combination with Ehlers fails to teach each and every element of the invention, and therefore requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be traversed.

More specifically, and in respectful disagreement with the Examiner, Applicant finds Ehlers at col. 5, lines 44-55, to teach a system “which allows *the customer* to make decisions”, and does not find Ehlers to teach a software module having a database object, an analysis object, and a comparator object, as claimed in the instant invention and discussed previously herein.

In further disagreement with the Examiner, and also for the reasons already discussed previously herein, Applicant finds Ehlers, at col. 27, lines 5-56, to teach a system where “*the user* can load any of the collected data into *a spreadsheet program of the user’s choice*”, and does not find Ehlers to teach a software module having a database object, an analysis object, and a comparator object, as claimed in the instant invention.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and disclose a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a).

In light of the forgoing, Applicant respectfully submits that the Examiner’s rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) have been traversed, and respectfully requests that the Examiner reconsider and withdraw these rejections.

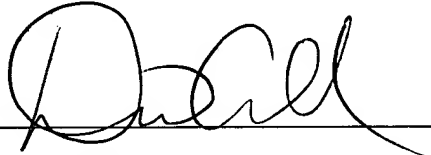
The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,

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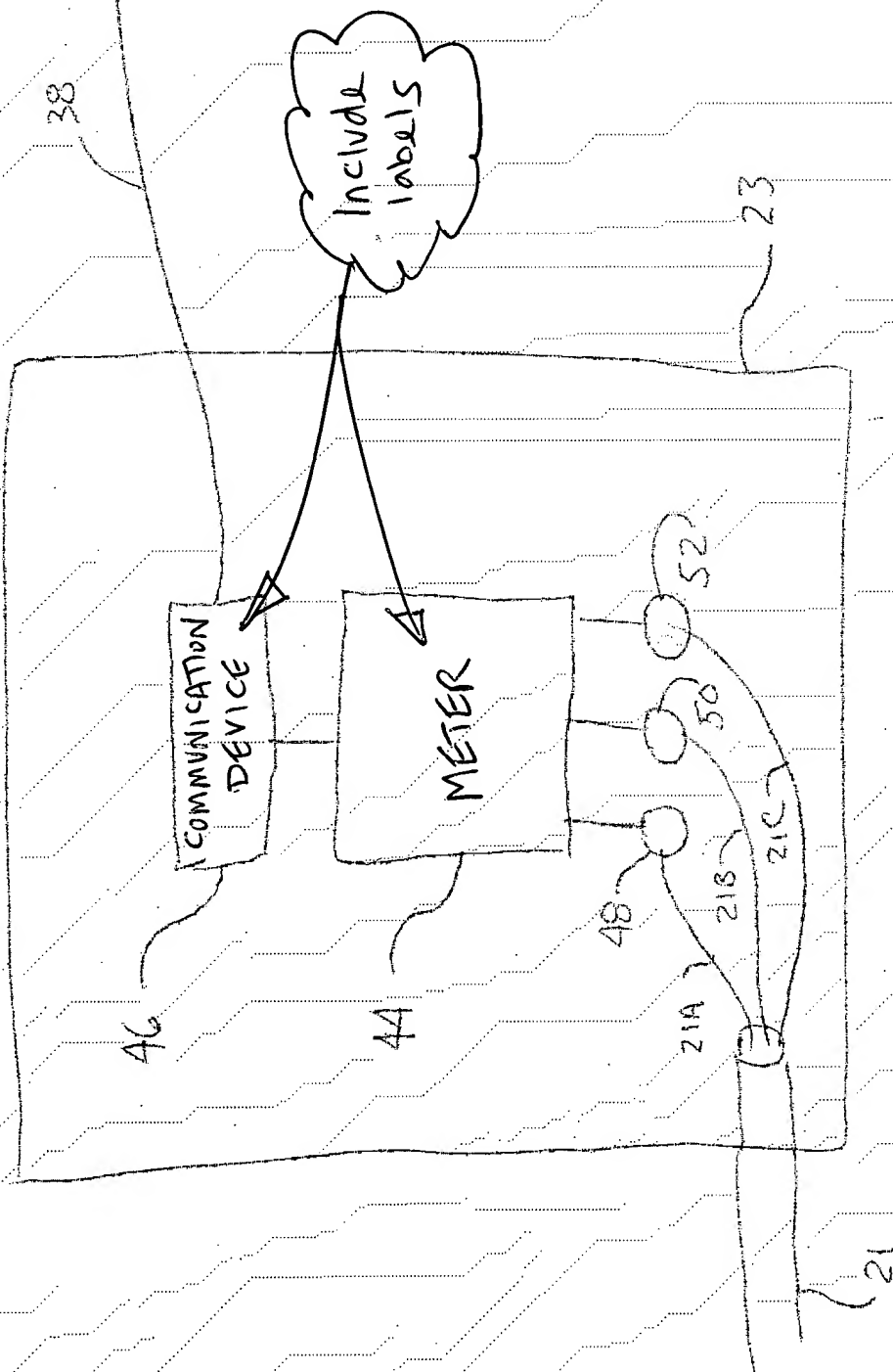


FIG 2

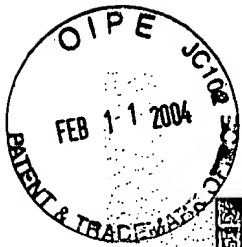
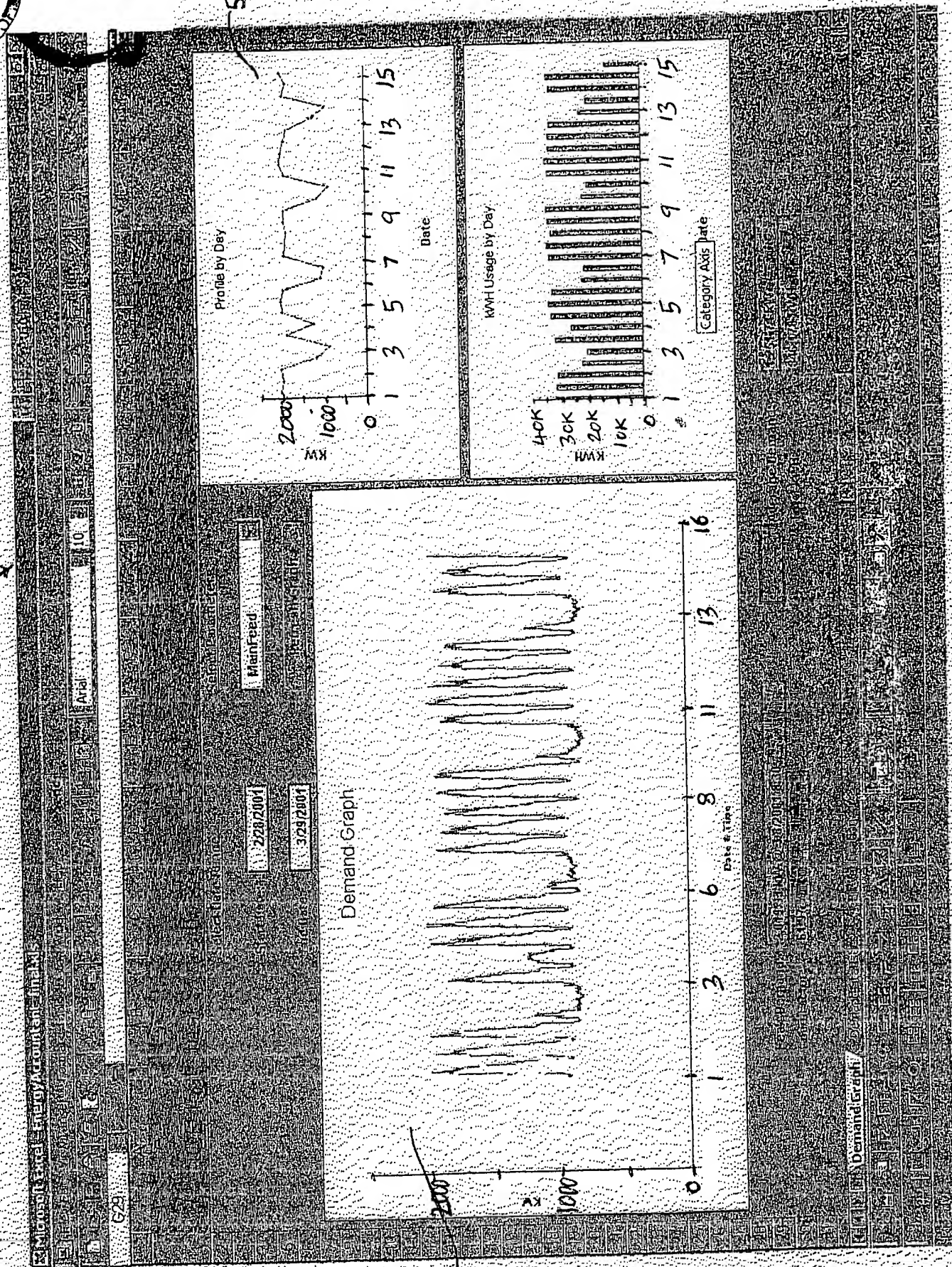


FIG 3

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